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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT LEE YATES, JR.,

9 Petitioner,

10 v.

11 STEPHEN D. SINCLAIR,

12 Respondent.  
13

CASE NO. C13-0842RSM

ORDER GRANTING PETITIONER'S  
REQUEST FOR STAY AND ABEYANCE

**THIS IS A CAPITAL CASE**

14 THIS MATTER comes before the Court on Petitioner Robert Lee Yates, Jr.'s request  
15 for stay and abeyance, which is contained in his Reply to the State's response to Petitioner's  
16 supporting brief on the merits. Dkt. #106 at 7. Mr. Yates notes that the Washington State Court  
17 of Appeals recently held his Spokane judgment is invalid in part, and that he must be  
18 resentenced on the first two counts. *Id.* He further notes that he must challenge the  
19 constitutionality of his Spokane convictions (which are at issue in Claim Three of the Amended  
20 habeas petition) in the state court before his Claim Three will be ripe for review in this Court.  
21 *Id.* at 7-8. Thus, he seeks to stay the Court's consideration of his First Amended Petition so  
22 that he may exhaust his challenges to the Spokane judgment. Respondent asks the Court to  
23 dismiss the Claim, and makes no representation as to whether Mr. Yates will be allowed to raise  
24 it in a successive petition. Dkt. #105 at 10-11.  
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1 As the parties know, a federal court may not grant habeas corpus relief on a claim that  
2 has not been exhausted in state court. 28 U.S.C. § 2254(b). The federal habeas statutes codify  
3 the long-standing common law rule that a state prisoner must “fairly present” to the state courts  
4 the substance of the federal claim. *Picard v. Connor*, 404 U.S. 270, 275 (1971). The doctrine  
5 of exhaustion derives from the policy of federal-state comity and gives state courts the first  
6 occasion to correct any constitutional violations. *See id.* at 275-76.

8 “When faced with a petition that contains unexhausted claims, a district court has four  
9 options: (1) stay the petition pending the outcome of state proceedings; (2) allow the petitioner  
10 to delete the unexhausted claims and proceed on the exhausted claims; (3) dismiss the petition  
11 without prejudice as unexhausted; or (4) deny the unexhausted claims on the merits under 28  
12 U.S.C. 2254(b)(2).” *Baker v. Ricci*, CIV. 09-3654 KM, 2013 WL 4833415, at \* 11 (D.N.J. Sept.  
13 9, 2013) (citing *Rhines*, 544 U.S. at 277-78). If a federal habeas petitioner requests a stay and  
14 abeyance to bring the unexhausted claims in state court, this Court may stay the mixed habeas  
15 petition if three conditions have been met: (1) the petitioner has shown “good cause” for his  
16 failure to exhaust; (2) the unexhausted claims are not “plainly meritless”; and (3) the petitioner  
17 has not engaged in dilatory or abusive litigation practices. *See Rhines*, 544 U.S. at 277-78. “In  
18 such circumstances, the district court should stay, rather than dismiss the mixed petition.” *Id.*  
19 at 278. This is because “the petitioner’s interest in obtaining federal review of his claims  
20 outweighs the competing interests in finality and speedy resolution of federal petitions.” *Id.*

23 As this Court previously determined, Claim Three warrants application of a stay. *See*  
24 Dkt. #25. The claim alleges that the Spokane County convictions are constitutionally invalid  
25 such that use of the convictions by the Pierce County Prosecutor to obtain a death sentence was  
26 improper. Mr. Yates is currently challenging the constitutionality of his Spokane County

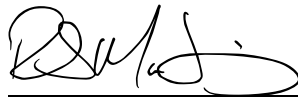
1 convictions before the Washington Supreme Court. In *Johnson v. Mississippi*, 486 U.S. 578  
2 (1988), the Supreme Court held that where a death sentence was predicated in part on a prior  
3 conviction that was later vacated, the death sentence must also be vacated if the sentencing jury  
4 considered evidence that was “revealed to be materially inaccurate.” *Id.* 589-90. Here, if the  
5 Washington Supreme Court finds the Spokane County convictions unconstitutional, he will  
6 raise the use of those convictions in these proceedings. Dkt. #106 at 8. Thus, until the state  
7 Supreme Court addresses the merits of Mr. Yates’ constitutional challenge, this Court’s  
8 consideration of Claim Three would be premature.

10 Mr. Yates filed the unexhausted claims to preserve his right to federal habeas review  
11 before expiration of the Anti-Terrorism and Effective Death Penalty Act of 1996’s one-year  
12 statute of limitations. Full exhaustion of Mr. Yates’ habeas claims will serve to “reduce[]  
13 piecemeal litigation . . . [and] as a result the [Court] will be more likely to review all of [Mr.  
14 Yates]’ claims in a single proceeding, thus providing for a more focused and thorough review.”  
15 *Rose v. Lundy*, 455 U.S. 509, 520 (1982).

17 Accordingly, having considered Mr. Yates’ request, and the balance of the record, the  
18 Court hereby finds and ORDERS:

- 19 1. This action is STAYED so that Petitioner may exhaust, in state court, Claim Three of  
20 the First Amended Petition for Writ of Habeas Corpus;
- 21 2. The Clerk SHALL remove the First Amended Petition for Writ of Habeas Corpus (Dkt.  
22 #11) from the Court’s motion calendar, to be replaced for consideration when the stay  
23 is lifted; and
- 24 3. Following the conclusion of Petitioner’s state court proceedings, Petitioner shall, within  
25 thirty (30) days, bring a motion to lift the stay.  
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1 DATED this 25th day of May, 2018.

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4 RICARDO S. MARTINEZ  
5 CHIEF UNITED STATES DISTRICT JUDGE  
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